

AKIN GUMP  
STRAUSS HAUER & FELD LLP

Attorneys at Law

**TOM W. DAVIDSON**  
202.887.4011/fax: 202.887.7719  
tdavidson@akingump.com

July 1, 2005

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 22054

**Re: MB Docket No. 03-15  
WTVH License, Inc.  
WTVH-DT, Syracuse, NY (Facility ID 74151)  
Request for Waiver and Extension of Replication/Maximization Deadline**

Dear Ms. Dortch:

WTVH License, Inc. ("WTVH License"), licensee of television station WTVH-DT, Syracuse, NY ("WTVH"), by its attorneys, hereby requests a temporary, six-month waiver and extension of the July 1, 2005 replication/maximization deadline applicable to stations affiliated with a top-four network and located in the top-100 markets. For the reasons set forth below, good cause exists for granting a temporary, six-month waiver and extension of the July 1, 2005 replication/maximization deadline as it applies to WTVH.

In the digital television ("DTV") table of allotments, WTVH was assigned DTV channel 47, which WTVH License has selected as the in-core DTV channel for post-transition operation of WTVH.<sup>1</sup> WTVH License also has certified that after the DTV transition it will operate WTVH post-transition pursuant to a pending DTV minor modification application.<sup>2</sup> WTVH currently has pending an application seeking a minor modification of its DTV construction permit.<sup>3</sup> The minor modification application remains pending due to an international coordination issue. WTVH currently is operating with reduced power DTV facilities pursuant to

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<sup>1</sup> See File No. BFRECT-20050209ASD.

<sup>2</sup> See File No. BCERCT-20041105BBH.

<sup>3</sup> See File No. BMPCDT-20040810ABB, amended Nov. 29, 2004. This minor modification application is not subject to the DTV filing freeze established August 3, 2004, because it does not propose to extend WTVH's contour beyond the station's authorized or allotted contour.

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a special temporary authorization (“STA”) that has been extended through July 1, 2005.<sup>4</sup> Concurrently with this waiver request, WTVH License has filed under separate cover a request for an additional 180-day extension of WTVH’s DTV STA.

In the *Second DTV Periodic Review Report & Order*, the Federal Communications Commission (“FCC” or “Commission”) established July 1, 2005 as the “use-it-or-lose-it” deadline for DTV stations that are affiliated with the top-four networks (*i.e.*, ABC, CBS, Fox, and NBC) and located in television markets 1-100.<sup>5</sup> Such stations which have received a tentative channel designation in the DTV channel election process must construct full, authorized DTV facilities in order to retain interference protection within each respective station’s replication or maximization service area.<sup>6</sup>

Pursuant to the Commission’s decision in the *Second DTV Periodic Review Report & Order*, WTVH is subject to the July 1, 2005 “use-it-or-lose-it” deadline because WTVH is a CBS network affiliate and its community of license is located within the Syracuse DMA, a top-100 television market. In addition, in the DTV channel election process WTVH has tentatively received its allotted, in-core DTV channel 47 for post-transition operation.<sup>7</sup> Nevertheless, as explained below, there is good cause for waiving temporarily the July 1, 2005 “use-it-or-lose-it” deadline as it applies to television station WTVH.

A temporary waiver of the July 1, 2005 replication deadline as it applies to WTVH is warranted because the Commission has not yet acted on the minor modification application filed by WTVH License on August 10, 2004, due to a pending international coordination issue. As a result, due to circumstances beyond WTVH License’s control, WTVH has been unable to commence construction of its desired post-transition DTV facilities.<sup>8</sup> In addition, WTVH has not commenced construction of the DTV facilities currently authorized in the station’s DTV

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<sup>4</sup> See File No. BDSTA-20030925BBX, as extended by BEDSTA-20050215ACF and BEDSTA-20050218ACT.

<sup>5</sup> See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, Report and Order, 19 FCC Rcd 18279, ¶78 (2004) (“*Second DTV Periodic Review Report & Order*”).

<sup>6</sup> See *id.* at ¶85.

<sup>7</sup> See *DTV Tentative Channel Designations for 1,554 Stations Participating in the First Round of DTV Channel Elections*, Public Notice, DA 05-1743 (rel. June 23, 2005).

<sup>8</sup> Neither has WTVH begun construction of full digital facilities in accordance with its initial digital construction permit because any such construction would have to be abandoned upon resolution of the pending international coordination issue and grant of the Maximization CP by the Commission.

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construction permit because such facilities are authorized at a different site than the site requested in the WTVH's minor modification application and such the currently authorized DTV facilities will be abandoned once the minor modification application is granted.

Nevertheless, WTVH currently provides the required DTV city grade contour over the station's principal community of Syracuse, New York pursuant to a DTV STA that complies with the Commission's minimum DTV buildout requirements. Although WTVH will continue to provide digital service to its community of license pursuant to its STA, WTVH cannot replicate the service area to which it previously certified until such time as the station's minor modification application is granted and the station completes construction of its requested DTV facilities. Accordingly, because WTVH cannot commence construction of the DTV facilities requested in its pending minor modification application, it cannot satisfy the upcoming July 1, 2005 "use-it-or-lose-it" deadline.

For the foregoing reasons, WTVH License respectfully requests a temporary, six-month waiver and extension of the July 1, 2005 "use-it-or-lose-it" deadline as it applies to television station WTVH.

Please direct any questions or inquiries regarding this matter to the undersigned.

Respectfully submitted,

/s/

Tom W. Davidson, Esq.

cc: Shaun Maher, Esq. (via e-mail)